



Office of the Attorney General  
State of Texas

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ATTORNEY GENERAL

December 9, 1998

Ms. Tracy Calabrese  
Assistant City Attorney  
City of Houston  
Legal Department  
P.O. Box 1562  
Houston, Texas 77251-1562

OR98-3035

Dear Ms. Calabrese:

You ask whether certain information may be released under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 121433.

The City of Houston (the "city") has received several requests for the financial disclosure statements submitted by various city officials. You ask whether you may release the statements in their entirety or whether certain information must be withheld based on a right of privacy under section 552.101 of the Government Code or under section 552.117 of the Government Code. You have submitted a representative sample of the requested statements.

You explain that the city's Code of Ordinances requires city officials and candidates for elective office to file the requested disclosure statements with the city secretary. Houston, Tex., Code of Ordinances § 18-21(b) - (e). Officials required to submit the statements include elected officials, certain appointed or executive level employees, and assistant city attorneys. Houston, Tex., Code of Ordinances § 18-2, 18-21(a). The statements include fourteen categories of information, including the names and addresses of the city official or candidate and the names of all members of their household, all sources of income over \$250.00 within the household, ownership of publicly traded stock or any business ownership by the household, property ownership by any member of the household, contractual financial liabilities of the household, and all household memberships on boards of directors. Houston, Tex., Code of Ordinances § 18-21(g). Reports of cash value or interest may be reported within one of seven category levels in the statements. Houston, Tex., Code of Ordinances § 18-21(h). Members of the city official's or candidate's household include spouses, children, parents, or any other relatives. Houston, Tex., Code of Ordinances § 18-2.

The requested statements, by city ordinance, are records available in their entirety to the public. Section 18-22 of the city's Code of Ordinances provides:

All financial disclosure statements required by this article shall be sworn and shall constitute public records. The city secretary shall maintain such statements in a manner that is accessible to the public during regular business hours.

You indicate and it is clear that the statements often contain information concerning a city official's personal financial information, including allocation of their salary to a voluntary investment program. You point out that this office has held that similar information was protected from disclosure. See Open Records Decision Nos. 600 (1992), 545 (1990), 373 (1983). You also question whether the city may release the statements as required by ordinance even though some of the information reveals whether an official has family members. Gov't Code § 552.117.

You argue that the city, as a home-rule city, is empowered to enact ordinances governing matters of local concern. You state that the city "has made a legislative determination that public confidence in their elected city officials and executive level employees is enhanced by the public's knowledge that these city officials are not engaged in conflicts of interest." We have concluded previously that a home-rule city is authorized to require city officials to file financial disclosure statements, so long as the disclosure ordinance is not inconsistent with the city's charter or state law. Attorney General Opinion H-969 (1977). Any ordinance that conflicts with the Open Records Act, therefore, would be of no effect. See Attorney General Opinion H-1070 at 5 (1977); Open Records Decision Nos. 594 at 2-3 (1991) (city ordinance cannot operate to make information confidential when not excepted by Open Records Act), 263 (1981) (city ordinance may not conflict with Open Records Act); see also *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 677 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977) (agency rule may not make information confidential in circumvention of Open Records Act).

The Open Records Act provides that public information in the possession of a governmental body must be made available to the public unless it is excepted from disclosure. Gov't Code §§ 552.007, .021. Two such exceptions are sections 552.101 and 552.117 of the Government Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by common-law privacy and excepts from disclosure private facts about an individual. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Section 552.117 excepts from required public disclosure the home addresses, telephone numbers, social security numbers, or information revealing whether a public employee has family members of public employees or officials who request that this information be kept confidential under section 552.024. See Open Records Decision No. 455 (1987). Both of these provisions are mandatory exceptions that protect information which a governmental body is prohibited from

releasing subject to criminal prosecution. Gov't Code 552.007, .352; *see* Open Records Decision Nos. 455 (1987), 344 (1982), 325 (1982). The questions you raise, therefore, require us to consider whether the city may release information pursuant to a city ordinance when the information is protected from disclosure by a mandatory exception under the Open Records Act.

Because the city's ordinance may conflict with the requirements of the Open Records Act, we must examine whether section 18-22 has been preempted by either section 552.101 or 552.117 of the Government Code. Open Records Decision Nos. 594 at 2-3 (1991), 263 (1981). We recognize that home-rule cities have broad discretionary powers, provided that no ordinance "shall contain any provision inconsistent with the Constitution of the State, or of the general laws enacted by the Legislature of this State." Tex. Const. art. XI, § 5; *Dallas Merchant's & Concessionaire's Ass'n v. City of Dallas*, 852 S.W.2d 489, 490-91 (Tex. 1993). Home-rule cities possess the full power of self government and look to the Legislature not for grants of power, but only for limitations on their power. *Id.* An ordinance of a home-rule city that attempts to regulate a subject matter preempted by a state statute is unenforceable to the extent it conflicts with the state statute. *Dallas Merchant's & Concessionaire's Ass'n*, 852 S.W.2d at 491; *see City of Brookside Village v. Comeau*, 633 S.W.2d 790, 796 (Tex. 1982), *cert. denied*, 459 U.S. 1087, 103 S.Ct. 570, 74 L.Ed.2d 932 (1982). However, "the mere fact that the legislature has enacted a law addressing a subject does not mean the complete subject matter is completely preempted." *Dallas Merchant's & Concessionaire's Ass'n*, 852 S.W.2d at 491; *City of Richardson v. Responsible Dog Owners*, 794 S.W.2d 17, 19 (Tex. 1990). "[A] general law and a city ordinance will not be held repugnant to each other if any other reasonable construction leaving both in effect can be reached." *City of Beaumont v. Fall*, 116 Tex. 314, 291 S.W. 202, 206 (1927). Thus, if the Legislature chooses to preempt a subject matter usually encompassed by the broad powers of a home-rule city, it must do so with unmistakable clarity. *Dallas Merchant's & Concessionaire's Ass'n*, 852 S.W.2d at 491; *see City of Sweetwater v. Geron*, 380 S.W.2d 550, 552 (Tex. 1964).

In this instance, however, we need not determine whether section 552.101 preempts the city's disclosure ordinance because we do not believe that the two provisions conflict. Attorney General Opinion H-1070 at 5 (1977). As we previously stated, section 552.101 protects from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Because we do not believe that the information on the financial statements is protected by a common-law right of privacy, section 552.101 is inapplicable to the requested information. Information may be withheld from the public under common-law privacy when (1) it is highly intimate or embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977); Open Records Decision No. 611 at 1 (1992). You question whether at least some of the financial information in the statements is protected by common-law privacy.

We have previously stated that

[i]n our opinion, all financial information relating to an individual -- including sources of income, salary, mortgage payments, assets, medical and utility bills, social security and veterans benefits, retirement and state assistance benefits, and credit history -- ordinarily satisfies the first requirement of common law privacy, in that it constitutes highly intimate or embarrassing facts about the individual, such that its public disclosure would be highly objectionable to a person of ordinary sensibilities.

Open Records Decision No. 373 at 3 (1983); *see* Open Records Decision No. 545 at 4-5 (1990). In fact, several prior decisions of this office have found that financial information relating only to an individual ordinarily satisfies the first requirement of the test for common-law privacy, but that there is a legitimate public interest in the essential facts about a financial transaction between an individual and a governmental body. Open Records Decision Nos. 600 (1992), 545 (1990), 373 (1983). Thus, a public employee's allocation of their salary to a voluntary investment program offered by their employer is a personal investment decision, and information about it is generally excepted from disclosure by a common-law right of privacy. Open Records Decision Nos. 600 (1992) (TexFlex benefits), 545 (1992) (deferred compensation plan). However, where a transaction is funded in part by the state, it involves the employee in a transaction with the state and is not protected by privacy. Open Records Decision No. 600 (1992) (mandatory state retirement program).

The requested information here consists of information involving financial transactions between an individual and the governmental body and information relating only to personal investment decisions. Nevertheless, under the facts presented to this office, we conclude that there is legitimate public interest in the financial information at issue. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d at 685 (special circumstances of legitimate public interest). The statements are submitted by a limited number of city officials who make significant city decisions. The statements could provide information about potential conflicts of interest between a decision-maker's personal financial investments and the city's interests. In fact, the city's ethics and financial disclosure ordinances are predicated on the following policy statement:

It is the policy of the city that all city officials and candidates for city elective office shall act and conduct themselves, both inside and outside the city's service, so as to give no occasion for distrust of their integrity, impartiality, credibility or their devotion to the best interests of the city and the public trust that it holds. To this end, there is established in this chapter an ethics committee for the city. The purpose of the committee is to accept and review complaints of impropriety on the part of city officials and candidates for city elective office, including, but not limited to, conflicts of interest such

as use of offices or employment for private gain, the granting and exchanging of favored treatment to persons, businesses, or organizations, and the conduct of activities that engender opportunities to influence government decisions for gain or advantage, or that might otherwise bring discredit on or to the city.

Houston, Tex., Code of Ordinances § 18-1. By enacting the ethics ordinances, the city has determined that the public has an interest in this type of financial information. We find that in the case of the city's financial disclosure statements, significant public interest exists in their disclosure. *See* Attorney General Opinion H-15 at 5-7 (1973); Open Records Decision No. 146 (1976); Open Records Letter No. 94-059 (1994); *see also* Attorney General Opinion H-1070 (1977). Consequently, the statements are not protected by a common-law right to privacy and section 552.101 is inapplicable. The city's ordinance does not conflict with section 552.101 of the Government Code. Attorney General Opinion H-1070 at 5 (1977).

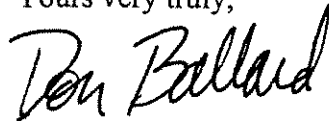
Release of information within the statements revealing a city official or employee's home address and whether the official has family members, however, presents a conflict between application of the city's ordinance and section 552.117 of the Government Code. The Legislature, by enacting section 552.117, meant to protect from required public disclosure the home addresses, telephone numbers, social security numbers, or information revealing whether a public employee or official has family members when the employees or officials request that this information be kept confidential under section 552.024 of the Government Code. We find that the Legislature has with unmistakable clarity required governmental bodies to withhold a public official's home address and information revealing whether the official has family members when they have requested that this information be kept confidential under section 552.024. *See* Open Records Decision Nos. 622 (1994), 455 (1987) (*citing* House Committee on State Affairs, Bill Analysis, H.B. 1976, 69<sup>th</sup> Leg. (1985); Senate Committee on State Affairs, Bill Analysis, H.B. 1976, 69<sup>th</sup> Leg. (1986)). *But see* Open Records Decision No. 516 (1989) (governmental body may not invoke section 552.117 to withhold information when another governmental body is expressly authorized to obtain it).

Because section 18-22 of the city's Code of Ordinances would mandate the release of this information when contained on the required financial disclosure statement, the ordinance conflicts with section 552.117 of the Government Code. Release under the ordinance would deprive city officials certain protections granted them by the Legislature. We believe the ordinance to be unenforceable to the extent it conflicts with section 552.117 of the Government Code. *Dallas Merchant's & Concessionaire's Ass'n*, 852 S.W.2d at 491; Open Records Decision Nos. 594 at 3 (1991), 263 at 2 (1981). Consequently, the city must redact any information on the financial disclosure statements which reveals a public employee's or official's home address and whether that official has family members if the official has requested that this information be kept confidential under section 552.024 of the

Government Code. The remaining information in the financial disclosure statements may be released. Notwithstanding the limited ruling here, city officials and employees must continue to comply with all state and local disclosure and conflicts of interest provisions.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. Pursuant to section 552.301 of the Government Code, the city may rely on this ruling as a "previous determination" concerning the release of financial disclosure statements required by section 18-21(b) of the city's Code of Ordinances.

Yours very truly,



Don Ballard  
Assistant Attorney General  
Open Records Division

JDB\nc

Ref: ID# 121433

Enclosures: Submitted documents

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